



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

January 9, 2008

The Honorable Judith Spang, Chairman  
House Resources, Recreation, and Development Committee  
Legislative Office Building, Room 305  
Concord, New Hampshire 03301

**Re: HB 1353, relative to local control of water resources**

Dear Chairman Spang:

Thank you for the opportunity to comment on HB 1353, which would require local approval of any new, large surface water or groundwater withdrawal and also provides municipalities with the right of first refusal prior to the sale of assets by a privately owned public water utility. The Department of Environmental Services (Department) does not support this bill as proposed.

HB 1353 would require local approval by an affirmative vote of all communities with aquifers potentially impacted by large groundwater withdrawals (Paragraph 2) and large surface water withdrawals (Paragraph 3). We do not support these provisions because they will limit the State's ability to effectively manage water resources consistent with the State's role as the steward of these resources. Furthermore, the number of communities potentially required to approve each withdrawal would make permitting unworkable for applicants. We take no position on the proposed provision of the right of first refusal for a municipality to purchase a privately owned public utility (Paragraph 4).

In 1998, the Groundwater Protection Act, RSA 485-C, was amended to require that new large groundwater withdrawals (withdrawals exceeding 57,600 gallons over any 24-hour period) obtain a permit from the Department to ensure that no unmitigated impacts occur to surrounding water resources and water users. The existing state permitting process clearly recognizes that both the availability of water resources and impacts of withdrawals are not limited by municipal boundaries. It further recognizes that water is a shared resource that should be managed in a sustainable manner for the benefit of all New Hampshire citizens.

Providing for local approval of large groundwater withdrawals in addition to the existing state permitting process has been considered several times in the past by the Legislature. Each time, after careful consideration, it has been determined that municipalities should be given ample opportunity to comment on state permit applications but should not have veto power. We understand that this conclusion has been reached in recognition of the State's role as groundwater steward, of the fact that water resources movement does not correspond to town boundaries, and that adjacent communities in some areas of the state may be "water rich" and "water poor," respectively.

Since 1998, the Groundwater Protection Act has been further strengthened by three significant amendments, including the addition of clearer requirements for municipal input into the



state permitting process. And, the permitting program continues to be reviewed by the Groundwater Commission, established by the Legislature for this purpose. The Commission has already made recommendations that have been implemented by the Department and the Legislature to improve the program, and will continue to evaluate this program and make further recommendations in the future. Through this history of improvement, New Hampshire's large groundwater withdrawal permitting program has evolved to become among the most comprehensive in the country and is expected to continue to improve into the future.

The Department is also concerned that requiring "an affirmative vote from each municipal legislative body in which any part of the relevant surface water lies," as proposed in Paragraph 3, would be unworkable and unreasonable for proposed surface water withdrawals. These withdrawals could, for example, be proposed for large rivers such as the Merrimack River that flow through dozens of communities or for large lakes such as Lake Winnepesaukee that are surrounded by many communities. This would place extraordinary approval requirements on applicants.

New surface water withdrawals in New Hampshire are currently regulated primarily through water quality certificates issued by the Department under Section 401 of the Federal Clean Water Act. Section 401 provides for state review and certification of proposed activities that require a federal license or permit for the construction or operation of facilities such as surface water withdrawal intakes that require wetlands dredge and fill permits. For these situations, applicants must receive a 401 water quality certificate from the Department by which we certify that any proposed discharges into waters of the state will not violate surface water quality standards. Please also note that an amended version of Senate Bill 158, a re-referred bill from the 2007 Legislative Session, is also expected to be heard this session starting in the Senate. SB 158, as amended, is expected to propose to further strengthen and clarify state authority for issuing Section 401 water quality certificates for surface water withdrawals.

Thank you again for this opportunity to comment on this bill. Please feel free to call me at 271-3503, or Sarah Pillsbury at 271-1168, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack  
Commissioner

cc: Representatives Kurk  
Representative Harvey  
Representative Buco  
Representative D'Allesandro